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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 565

RUTH LOUGHRAN,

Petitioner,

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,

Respondents.

PETITION FOR REHEARING OR MODIFICATION OF DECREE.

WILLIAM E. LEAHY,
WILLIAM J. HUGHES, JR.,
EUGENE B. SULLIVAN,
JAMES F. REILLY,
Attorneys for Respondents,
Investment Building,
Washington, D. C.

SUPREME COURT OF THE UNITED STATES

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Come now respondents by their attorneys and move this Court for a rehearing or modification of its decree herein on the following grounds:

This Court in its opinion stated:

> "The trustees argue that it must be assumed on the pleadings that plaintiff's residence in Florida and the marriage there were not in good faith. But the bill

> alleged the good faith of the residence and marriage in Florida; and the answer contains no specific denial of that allegation."

With respect, trustees never argued that the bad faith of the residence and marriage in Florida must be assumed. Also, with respect, the answer *does* contain a specific denial of that allegation. The denial of the allegation is as specific as the circumstances would permit. The pleadings show conclusively that respondents with reference to the allegation of good faith as to the residence and marriage in Florida, averred, specifically, that "they had no knowledge" (Par. 3 & 4, R. 17). Under Rule 29 of the Equity Rules of the Supreme Court of the District of Columbia this operated as a denial.[1] We respectfully invite the attention of this Court to the fact that a denial is in truth and in fact a denial, or it is nothing. It is no answer to say that the denial should be more specific for this amounts to holding that the averment "without knowledge" in answer to any given allegation is useless and ineffective for any purpose, which would nullify the quoted part of District of Columbia Equity Rule 29. Certainly the averments of a defendant's pleading are never required to transcend the information in the possession of the defendant at the time. Under the Equity Rules the defendant is given a clear right to state that he is without knowledge as to any given averment of the plain-

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[1] D. C. Equity Rule 29, Similar to Federal Equity Rule 30, reads as follows:

> "The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill * * * specifically admitting or denying, or explaining the facts, upon which the plaintiff relies, *unless the defendant is without knowledge in which case he shall so state, such statement operating as a denial.*"

tiff and this puts the plaintiff to his proof. The law is as stated in *In re Fosgate,* 268 F. 985, and, as the rule itself reads, that an averment "without knowledge" operates as a denial.

This Court likewise said that respondents made no averment that the Florida residence and marriage was with the intent of evading the prohibition against remarriage and that the Court of Appeals did not pass upon the issues sought to be raised. In answer, we respectfully ask the Court to consider whether, when the alleged good faith of the Florida residence and marriage is denied, by the averment of "without knowledge," it does not amount to exactly the same thing as alleging that the Florida residence and marriage was with the intent of evading the District of Columbia statute. The fact that the Court of Appeals did not pass upon the issue placed no additional burden upon the respondent. If it decided the case on another ground, which this Court now determines to be erroneous, respondent was not required, and indeed, as the completely victorious party, could not, under the rules, apply for a cross-petition for a Writ of Certiorari. The result of this Court's decision in the part referred to above, is to leave respondent and the Court of Appeals in doubt as to whether the issue of the good faith or bad faith of the Florida residence and marriage should be inquired into upon remand to the lower court. On the one hand there is the fact that under D. C. Equity Rule 29, defendant submitted a denial by the allegation of "without knowledge," thus raising an issue which, according to this Court's opinion, was never passed on by the Court of Appeals. On the other hand there is the fact that this Court in its opinion takes for granted that the good faith of the Florida residence and marriage was not put in issue. Counsel present this situation to the

Court for such action as it sees fit in order that future difficulty may be avoided.

WILLIAM E. LEAHY,
WILLIAM J. HUGHES, JR.,
EUGENE B. SULLIVAN,
JAMES F. REILLY,
Attorneys for Respondents,
Investment Building.

I, William E. Leahy, of counsel for respondents, do hereby certify that the foregoing petition for rehearing or modification of the decree is presented in good faith and not for delay.

WILLIAM E. LEAHY.